

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID W. RIGGINS, a/k/a DAWUD HALISI
MALIK,

Plaintiff,

v.

DAN PACHOLKE, TAMMY GWIN, C.
WHALEY, V. JOHANSEN, STEVE
RAMSEY, GREG JONES, and JOHN
SCOTT,

Defendants.

No. C10-5147 BHS/KLS

ORDER DENYING MOTION FOR
DEFAULT

Before the court is Plaintiff's motion for default. Dkt. 28. Plaintiff contends that Defendants have failed to answer or otherwise defend within twenty days of service of the summons and complaint and are therefore, in default. Plaintiff is incorrect and his motion will be denied.

DISCUSSION

Rule 55, which governs the entry of default, provides for the entry of default when a party fails to plead or otherwise defend. Federal Rule of Civil Procedure 55. On May 26, 2010, the court entered an Order directing service of Plaintiff's complaint. Dkt. 14. The Order explicitly states that "[e]ach Defendant who timely returns the signed Waiver (of Service of Summons) shall have sixty (60) days after the date designated in the Notice of Lawsuit to file

1 and serve an answer or a motion directed to the complaint, as permitted by Rule 12 of the
2 Federal Rules of Civil Procedure.” *Id.*, pp. 1-2 (emphasis in original). The Clerk mailed
3 Waivers of Service of Summons with copies of the complaint, to Defendants Greg Jones, C.
4 Whaley, V. Johansen (Coleman), Steve Ramsey, and John Scott, on June 7, 2010. Dkts. 15, 16,
5 17, 18 and 19. On June 15, 2010, counsel entered an appearance on behalf of all the defendants,
6 Dan Pacholke, Tammy Gwin, C. Whaley, V. Johansen, Steve Ramsey, Greg Jones, and John
7 Scott. Dkt. 20. On September 9, 2010, all the Defendants filed their Answer to the Complaint.
8 Dkt. 27.

10 As noted above, the waivers of summons expressly acknowledge receipt of the
11 complaint, waive service of the summons and Complaint, and provide that an Answer to the
12 Complaint is due within sixty days. The record reflects that the Defendants’ Answer was not
13 filed within sixty days. However, the court finds that there is no danger of prejudice to Plaintiff
14 as the length of the delay is *de minimis* and has had no impact on these judicial proceedings and
15 that that there is no evidence that the Defendants have acted in bad faith.

17 Accordingly, Plaintiff’s motion for default judgment (Dkt. 28) is **DENIED**.

19 DATED this 10th day of September, 2010.

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22 Karen L. Strombom
23 United States Magistrate Judge
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